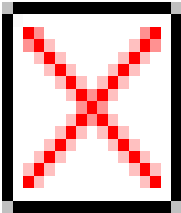


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By Dr G Gokul Kishore



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number of notifications have been issued to implement GST Council's decisions relating to residential realty sector (discussed in Part- [XXX](#)). We pause for now before analysing them. Loyalty programmes for sales promotion is a routine affair for companies. But when such schemes are subject to scrutiny under new tax regime, opportunity to understand certain issues arises. We will use such opportunity in this 31st part. Complying with our template, an additional issue on recent registration related instructions is also appended.

Loyalty & reward programmes - Claim as actionable claim not accepted

Business promotion is generally perceived as a difficult task. Compared to tax compliance in respect of activities relating to business promotion, marketing per se may be considered as easier. To inculcate loyalty among the consumers, reward programmes are implemented whereby either discount on subsequent purchases is given or gift articles are distributed on purchase over the prescribed limit fixed for entitlement to such benefit. As FMCG companies operate in several segments and product categories involving several distributors and thousands of retailers, such loyalty or reward programmes are administered through independent service providers. These programme managers or service providers charge certain amounts like management fee from the companies who are called partners. As long as all the consumers redeem their reward points within the period of expiry and additional discount is extended by the retailer who in turn gets back the money from the company through the loyalty programme service provider, there may not be any issue. In particular, when the service provider pays applicable GST on the consideration received from the partner companies for the services provided (management fee or otherwise), the department cannot have any objection either.

Not all consumers are lured by such reward points and, therefore, in certain cases, they are not claimed or redeemed. Such unredeemed points represent income for the service provider because, in general, the amount to be distributed by way of discount to consumers towards such points are paid upfront by the partner company to the service provider. Such income is liable to be included in the taxable value of the services provided and tax is liable to paid, according to the department. The service provider argued unsuccessfully twice that such income is out of the ambit of GST on the ground that the reward points are in the nature of actionable claim [In Re: Loyalty Solutions and Research Pvt., Ltd., Ruling dated 23-10-2018 by Appellate Authority for Advance Ruling, Haryana] - [2019-TIOL-04-AAAR-GST](#).

Schedule-III to CGST Act which treats certain transactions as neither supply of goods nor that of services includes actionable claim other than lottery, betting and gambling. Definition of goods in Section 2(52) of CGST Act includes actionable claim. CGST Act calls for reference to Transfer of Property Act to understand what an actionable claim means. It may be attractive to see this definition which broadly covers claim to an unsecured debt (not covered by mortgage of immovable property or by hypothecation or pledge of movable property) and beneficial interest in goods not in the possession of the claimant.

While the service provider (in the referred case) sought to lay stress on the reward points as a debt and the claimants having beneficial interest on goods not in their possession, it appears the crucial point that the claimant does not have any contract with the service provider was missed. The service provider is not privy to the contract that the company has with the consumer and the consumer is not privy to the contract that the service provider has with the company. The contract that the service provider has, is with the partner company and the income from expired points is derived from the same contract with the partner and it is such partner who pays such amount. The amount transferred by the partner to the service provider for honouring the claims enables him to act on behalf of such partners who, in effect, extend discounts to consumers. The service provider does not, in a strict sense, provide any service to consumer in his independent capacity and the

consumer is not even aware of existence of such person operating the discounts. The service is provided to the partner and the amounts paid by the partner which are not distributed to consumers but retained on account of unclaimed points would become part of the consideration for the service provided to such partner.

The order of AAAR is cryptic and does not discuss in great detail the nature of actionable claim though it does contain interesting issues. The service provider pointed out the apparent contradiction in the advance ruling (which was under appeal) that till the time the points are redeemed, the same will constitute actionable claim and the expired points will not share the same nature. It may require further examination if one were to argue that the reward points could be perceived as actionable claim at the end of partner company as the consumer gets a beneficial interest in something not in his possession and such debt is also unsecured. If this reasoning is extended, then all discounts may take the colour of actionable claim which is evidently not the intention of law. It will need more scrutiny if the unclaimed points were to be treated as discount not passed on and the same is sought to be included by the department in the taxable value of the goods sold. Considering the complexity of the issues involved, CBIC should come out with taxpayer friendly clarification on GST treatment of reward schemes, vouchers, redemption and lapse thereof.

Registration - The tax evasion angle

There is much hype and hyper-reaction over allegedly increasing tax evasion mostly fuelled by shortfall in revenue collections. The targets might have been unrealistic but the industry is seen as less compliant in GST regime and, therefore, the department sees likelihood of evasion in every process and stage. In its zeal to broaden the base, many dealers were compulsorily migrated to GST. As many of them were not filing returns or paying any tax for various reasons, their registration was cancelled by the department. CBIC desires that such persons should come forward for revocation of cancellation of registration instead of applying for fresh registration. If new registration is sought, then tax dues will remain unpaid and seeking fresh registration in such a situation could be a modus operandi to evade payment of outstanding liabilities / tax.

By Circular No. [95](#)

dated 28-3-2019, CBIC has instructed its officers to exercise due caution when a person approaches for new registration. It seeks verification with available data based on PAN to find out whether such aspiring registrant was having registration earlier. It is not known what the officer will do if the person uses a different PAN. The applicant will be required to provide sufficient convincing justification for having come to the department again. If every applicant is suspected and subjected to such rigours at the threshold, the kind of confidence that such taxpayer will have in the department needs no elaboration. Exercising powers without circumspection is not uncommon and if the apex body confers such powers in the name of instructions and checking evasion, the climate of compliance can hardly improve. Such methods should change not because GST is new but because of the priority assigned to role of tax administration in assisting the taxpayers in compliance.

(â€¦To be continued)

[The author is an Advocate and Joint Partner, Lakshmikumaran & Sridharan, New Delhi. The views expressed are strictly personal.]

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